

1988

Philip Timothy dba Timothy Enterprises v. Ray W. Pease and Corrine Pease dba Norco Drilling Service : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

BRIEF OF RESPONDENTS

vs.

Case No. 860437
Category 13-B

88-0142- 6A

BRIEF OF RESPONDENTS

APPEAL FROM SUMMARY JUDGMENT GRANTED ON BEHALF OF PLAINTIFF
AGAINST DEFENDANTS RAY W. PEASE AND CORRINE PEASE
IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR UINTAH COUNTY, STATE OF UTAH
Honorable Richard C. Davidson, Presiding

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PHILIP TIMOTHY dba TIMOTHY ENTERPRISES,)	
)	BRIEF OF RESPONDENTS
Plaintiff/Respondent,)	
)	
vs.)	
)	Case No. 860437
RAY W. PEASE and CORRINE PEASE,)	Category 13-B
Husband and Wife, dba NORCO)	
DRILLING SERVICE,)	
)	
Defendants/Appellants.)	

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BRIEF OF RESPONDENTS

STATEMENT OF THE CASE

PLAINTIFF WAS GRANTED Summary Judgment against Defendants R.W. Pease and Corrine Pease for an obligation incurred by Norco Drilling Service by and through Appellants' co-partners Keith and Claudine Norwood.

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether the District Court was justified in finding there to be no genuine issue of a material fact and that Plaintiff/Respondent was entitled to Judgment as a matter of law.

2. Whether there was a material issue before the trial court as to whether the Norwoods borrowed money from Plaintiff on behalf of Norco Drilling Service.

3. Whether the issue of borrowing of funds was within the scope of the partnership agreement is properly before the court on appeal since it was not raised at trial court.

4. Representations of partnership by Defendants to Plaintiff are not necessary where a partnership, in fact, existed.

STATEMENT OF FACTS

Keith and Claudine Norwood, representing themselves to be acting on behalf of Norco Drilling Services, borrowed monies from and factored accounts with Plaintiff. (R.40) On May 5, 1983, Keith Norwood stated in his deposition which is part of the record that the Norwoods, husband and wife, were 50% partners and that the Peases, Appellants, husband and wife, were 50% partners. (p.11, line 10) Keith and Claudine Norwood were subsequently discharged of their debt obligations in a bankruptcy proceeding in 1983. On May 5, 1983, the deposition of Ray W. Pease was taken in a matter of Luther Lynn Sanders v Norco before the Industrial Commission. Mr. Pease stated in the deposition that he invested money in Norco Drilling Services, that he had an agreement and understanding that the Peases and the Norwoods were to share profits of the business enterprise. Mr. Pease stated that his understanding of the business relationship was that of an equal partnership and signed a writing intending that third

parties be made aware that R. W. Pease and Corrine Pease were equal partners. (R.4, R.120) (May 5, 1983, see deposition of Ray Pease, p.5)

Plaintiff filed action about March 5, 1984, to recover the partnership debt from Ray W. Pease and Corrine Pease. Plaintiff moved the court for a Summary Judgment based on the admissions of Ray W. Pease at the May 5, 1983, and upon the document introduced as an exhibit at that deposition which has been included in Appellants' Brief as Exhibit F.

ARGUMENT

Point 1: There is no genuine issue as to the fact that Appellants were partners with Keith Norwood and Claudine Norwood in the business enterprise known as Norco Drilling.

The court found the admissions of Ray Pease in his Affidavit and Deposition in the Sanders matter and the document signed by Ray Pease referred to as Exhibit 1 of Keith Norwood's May 5, 1983, deposition to be clear indication of the nature of his understanding of a partnership. Appellant Peases' allegation of belief that he was creating a limited partnership is of no consequence to this action. Ray Pease has indicated that he expected to receive 50% (fifty percent) of the profit from the operation of such piece of equipment. R.W. Pease in his Affidavit sets forth that it was his intention that the

partnership agreement be kept secret.

District Court relied upon Mr. Pease's own statements that he was an equal partner with Mr. Norwood. At the Deposition of May 5, 1983, Mr. Pease was shown the document described as Exhibit 1 which states, "To Whom It May Concern: This is to certify that the following persons, Keith Norwood, Claudine Norwood, and R.W. Pease and Corrine Pease are in full agreement of 50-50 general partnership in a company by the name of Norco Drilling Service located in Vernal, Utah. Signed Keith Norwood, signed R.W. Pease." (R.124)

Mr. Pease was asked at the May 5, 1983, deposition to examine Exhibit 1.

Question: "Is that your signature there?"

Answer: "Yes, Sir."

Question: "Is that the partnership agreement you've just described to me or the original partnership?"

Answer: "I think this was just for Ingersol-Rand."

Question: "Just to show them you were partners?"

Answer: "Yes." (R.120 to R.127)

The trial court clearly determined and found that the extremely self-serving assertions made by Defendants were not sufficient to raise a genuine issue. In their answer, Defendants deny there is in existence any type of partnership agreement. On the other hand, R.W. Pease signed a document certifying there was

a partnership agreement and tht he inended third parties to rely upon the partnership. Defendants in their answer denied they ever did business or represented themselves as partners or co-owners of Norco Drilling Service and at the same time state in the Affidavit that R. W. Pease indicated that signed the document in an effort to demonstrate and certify to Ingersol-Rand that the Appellants and Norwoods were partners in Norco Drilling Services. Mr. Pease also stated that no one was to know and then complains that he was referred to a silent partner.

Keith Norwood's deposition of May 5, 1983, (p.11, line 10) made it clear to the trial court the understanding of the parties was a 50% partnership interest to the Norwoods, husband and wife, and 50% to the Peases, husband and wife. The trial court was justified in light of the overwhelming evidence to determine that there existed no genuine issue as to a material fact and that reasonable minds could reach only the conclusion that Defendant/Appellants' assertions that they are not partners are too incredible to be believed. Blue Sky Advocates v. State of Washington, 727 P.2d 644 at 648 (Wash 1986); Hartley v. State of Washington, 698 P.2d 77 (Wash 1985).

Point 2: There is no material issue as to the fact that Keith Norwood and Claudine Norwood borrowed money from Plaintiff on behalf of Norco Drilling Services and the money remains unpaid.

The two printed form notes referred to by Appellant have filled in the blank as "maker" Norco Drilling. Further, the document attached as Exhibit E in Appellants' Complaint clearly indicates that Keith Norwood did act on behalf of Norco Drilling. The documents speak for themselves. The trial court so found there was no genuine issue as to whether Keith Norwood and Claudine Norwood had the ability to represent Norco Drilling Service. (R.23) There is no issue as to the fact that the monies remain unpaid. (R.40, R.41)

Point 3: The issue of whether the borrowing of funds was within the scope of the partnership agreement is not properly before the court on appeal.

Defendants have in their answer denied that they were partners in Norco. (R.5) They have at no time argued that Appellants had the authority or the ability to make partnership decisions. It is inconsistent to now argue for the first time on appeal that the borrowing of money by Keith Norwood on behalf of Norco Drilling was outside of the partnership agreement. District Court was justified in concluding that the unrefuted document signed on behalf of Norco Drilling by Keith Norwood was within the scope of the partnership. (R.40, R.118)

Point 4: Representations of partnership by Defendants to Plaintiff are not necessary where a partnership, in fact, existed.

Appellant argues that Defendants' conduct is insufficient to constitute a partnership by estoppel. This argument is not well made when there is in existence an actual partnership. Hence, the partnership by estoppel authority cited by Appellants is completely inapplicable to the fact situation before the court.

CONCLUSION

The evidence and record when taken as a whole shows that there is no genuine issue as to any material fact and Plaintiff is entitled to judgment as a matter of law.

Respectfully this 13 day of August, 1987.

BENNETT & JUDD, P.C.


Kirk C. Bennett
Attorney for Respondents

CERTIFICATE OF DELIVERY

I do hereby certify that I caused to be hand delivered, four (4) true and correct copies of the foregoing Brief of Respondents to McRae & DeLand, 209 East 100 North, Vernal, UT 84078 on this 13 day of August, 1987.

